IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5540 OF 2006

Somnath Punjaji Nerkar, .. Petitioner.

Vs

Municipal Corporation of
Greater Mumbai, .. Respondent.

Mr V.Y.Sanglikar i/b Mrs Nilima Sanglikar, for the petitioner.

Mr A.J.Bhor, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 27.09.2006
PC:

1. Heard the learned counsel for the parties.

2. Rule. Rule returnable forthwith. Mr.Bhor, learned counsel, waives service for the respondent. By consent, rule is heard finally.

3. This petition is directed against the order dated 14.3.2001, by which the Chamber Summons taken out by the petitioner for bringing him on record as heir and legal representative of the deceased plaintiff, has been dismissed. The petitioner had earlier challenged the impugned order by way of civil revision application and in that application this court had granted interim order. However, the civil revision application was

dismissed as not maintainable and hence, the petitioner has filed the present writ petition.

4. The suit was filed by one Ankara Punjani Nerkar on 24.2.1997. Admittedly, the suit was verified by Rajesh Nerkar, nephew of the plaintiff, as his Constituted Attorney. Rajesh Nerkar is the son of the present petitioner. The present petitioner and the original plaintiff - Anandrao are the real brothers. Plaintiff - Anandrao Punaji Nerkar died on 19.4.1997 leaving behind Somnath Nerkar as his only heir and legal representative. The Chamber Summons for bringing the petitioner as the heir and legal representative of the deceased-plaintiff was filed on 6.2.2001. The delay in filing the application was explained by the petitioner stating that he was under the impression that the suit will proceed since it was verified by his son Rajesh as the constituted attorney of the plaintiff, who was allowed to contest the suit on behalf of the plaintiff and, therefore, he did not take any step to bring him on record as heir and legal representative of the deceased-plaintiff. The court below has rejected the said explanation holding that the Chamber Summons was not taken out within time and it was devoid of any merit. The legislature has conferred the powers to condone delay by enacting section 5 of the Indian

Limitation Act,1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed is adequately elastic to enable the court to apply the law in the meaningful manner which subserves the ends of justice. From perusal of the facts and circumstances of this case, in any case, the petitioner did not stand to benefit by filing an application at belated stage. It cannot be presumed that the delay was occasion deliberately. The Supreme Court in **State of Nagaland Vs. Lipok AO and ors, (2005) 3 Supreme Court 752**, while interpreting the words "sufficient cause", has held that what constitutes sufficient cause cannot be laid down by hard-and-fast rules. The said expression should receive liberal construction. Applying the said principles to the facts of the present case, in my opinion, the delay caused cannot be said to be malafide and the mistake committed by the petitioner was tainted by any malafide motive. In the circumstances, this is a fit case where the delay should be condoned and allow the parties to contest the suit on merits.

5. In the circumstances, this writ petition is allowed. The Chamber Summons No.208 of 2001 is made absolute in terms of prayer clauses (a),(b) and (c). The petitioner to carry out the amendment within two

weeks from today. Hearing of the suit is expedited. Insofar as the notice of motion is concerned, it is open for the petitioner to file fresh notice of motion in his name after carrying out the amendment in the plaint. The order of status-quo granted earlier shall remain operative for a period of four weeks from today. Rule is disposed of.

(D.B.BHOSALE,J.)